1977

Salt Lake City, A Municipal Corporation of The State of Utah v. Raymond S. Shuey : Brief of Plaintiff-Appellant

Utah Supreme Court

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IN THE SUPREME COURT

OF THE STATE OF UTAH

SALT LAKE CITY, a municipal corporation of the State of Utah,	)	
Plaintiff-Appellant	)	Case No. 14819
vs.	)	
RAYMOND S. SHUEY,	)	
Defendant-Respondent.	)	

BRIEF OF PLAINTIFF-APPELLANT

Appeal from a judgment of the Third [illegible]
Court in and for Salt Lake County, [illegible]

Honorable Stewart M. Hanson, [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

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BRIEF OF PLAINTIFF-APPELLANT

NATURE OF CASE

This is an appeal from an Order of the District Court of the Third Judicial District in and for Salt Lake County, denying plaintiff the use of the presumption rule, i.e., that it may be presumed or inferred the registered owner of a vehicle, parked in violation of a parking regulation, was the person committing the violation.

DISPOSITION OF CASE BY LOWER COURT

Upon stipulated facts the lower court found the defendant not guilty and denied plaintiff the use of the presumption rule.

STATEMENT OF FACTS

Defendant is the registered owner of a Porsche vehicle, license No. KCC 789 and an Opal, license No. JJB 704. During

1974 and 1975 there were 14 parking tickets for meter violations issued against these vehicles by Salt Lake City Police Meter Maids. All tickets were issued within the corporate limits of Salt Lake City. Defendant was served with complaint, legally issued, and a set of facts were stipulated to by the respective counsel. The stipulated facts were as outlined above, with the addition that Section 156 of the Salt Lake City Traffic Code is a duly enacted ordinance, regulating parking meter violations. The facts were so stipulated and the case presented to the court for the determination as to whether the presumption rule should be applied.

ARGUMENT

THERE IS A COMMON LAW PRESUMPTION RULE THAT THE OWNER OF A MOTOR VEHICLE WAS OPERATING IT AT THE TIME IT WAS PARKED IN VIOLATION OF A PARKING REGULATION.

Because there is peculiar difficulties as to proof of the person who actually parked a motor vehicle at the time a violation occurred, courts have established a presumption rule of evidence. This rule is that it may be presumed or inferred that the owner of a motor vehicle was operating it at the time it was parked in violation of a parking regulation. Parking violations are of a peculiar sort. When vehicles are parked and left unattended, there is generally no one present to be arrested. It is unreasonable to require

a police officer to remain until the driver returns or to have one stationed at each parking space (or even a group of parking spaces) to watch who parks the vehicles therein. The only remaining alternatives are to impound vehicles in violation or to toss out parking regulations entirely.

The impounding of vehicles is no practical solution to the problem because a city could not keep on hand sufficient tow trucks to tow away the vehicles in violation. The expense thereof would be prohibitive and it would also be very distruptive of traffic movement, the very thing parking regulations are designed to relieve. One could envision 500 tow trucks in the downtown area of Salt Lake City towing one vehicle after another to an impound lot. Shoppers and persons on business could not even get through the streets, let alone find a parking spot.

The only logical and reasonable alternative is a presumption or inference. A presumption of this type arises from commonly accepted experienced of mankind and inferences which reasonable men might draw from such experience. Meares v. Meares, 256 Ala. 596, 56 So.2d 661 (1952); Indianapolis v. Keeley, 167 Ind. 516, 79 N.E. 499 (1906). When there is uniform experience concerning the connection between one fact that is proved and the one to be inferred, the unproven fact may be presumed. Greer v. U.S., 245 U.S.

559, 62 L.ed. 469, 38 S.Ct. 209 (1918).

If there is a rational connection between the fact proved and the fact to be presumed, the court may apply the presumption rule, i.e., on the basis of human experience it is the probable or natural explanation of the fact. Manning v. John Hancock Mut. L. Ins. Co., 100 U.S. 693, 25 L.ed. 761 (1880); Engel v. United Traction Co., 203 N.Y. 321, 96 N.E. 731 (1911).

In considering the constitutionality of an inference, the United States Supreme Court has applied a variety of tests to evaluate such inference. That court has determined that there must be a rational connection between the fact proved and the fact presumed. Tot v. U.S., 319 U.S. 463, 467, 63 S.Ct. 1241, 87 L.ed. 1519 (1943). The presumed fact must be more likely than not to flow from the proved fact. Leary v. U.S., 395 U.S. 6, 36, 89 S.Ct. 1532, 23 L.ed. 2d 57 (1969).

It is human experience that it is more likely than not that the owner of a vehicle is the one who parked a vehicle when a violation occurred. Regarding the rational connection between ownership and operation of a vehicle and the relative convenience of producing evidence of the facts, the Supreme Court of Michigan in People v. Kayne, 286 Mich. 571, 282 N.W. 248 (1938), referred to a random sampling taken on two

different dates where it was found that in 87.6% of the cases where vehicles had been illegally parked, the owner of such vehicle was the one committing the violation. In 8% of the cases the violation was committed by an immediate member of the owner's family. They found that in only 4.4% of the cases surveyed that the violation was committed by some person other than the owner or an immediate member of his family.

Presumptions can be made in criminal cases. In the case of State v. Kennedy, ___ Iowa ___, 224 N.W.2d 223 (1974), the court upheld a conviction of tampering with the odometer merely by showing the defendant was the owner of the vehicle and that the odometer was changed (no showing that defendant tampered with the odometer). This was a much more serious offense than is a parking meter violation and subjected the defendant to far greater penalties.

A substantial number of cases have concluded that an inference of the owner's guilt was justified in parking violations as a common law rule of evidence even though there is no statute or ordinance so providing. In People v. Rubin, 284 N.Y. 392, 31 N.E.2d 501 (1940), the New York Court of Appeals stated:

> "The contrary is urged because there was no direct proof that the stationing of the car in violation of the ordinance was done by the defendant. To rule that this inference may not

be drawn from the established facts would be to deny to the trier of the facts the right to use a common process of reasoning. . . . If he was not in control he could easily have produced a witness or witnesses to show it. (Citations omitted) We find it competent under the circumstances to conclude from the proof that the owner of the car controlled the car and personally violated the regulation."

See also, People v. Lang, 106 N.Y.S.2d 829 (1951); Commonwealth v. Ober, 286 Mass. 25, 189 N.E. 601 (1934); Chicago v. Crane, 319 Ill. App. 623, 49 N.E.2d 802 (1943).

The Supreme Court of Rhode Island came to the same conclusion in the case of State v. Morgan, 72 R.I. 101, 48 A.2d 248 (1946). Therein the court stated:

"It was agreed by the parties that the sole issue was the sufficiency of the evidence to support the conclusion that the defendant had parked or allowed the automobile to be parked in violation of law. The decisive question therefore is whether, in the absence of any rule of evidence appearing in the enabling statute or municipal traffic regulations, the mere proof of the registration of the automobile in defendant's name, without more, is enough to support an inference that he had parked or allowed the automobile to be so parked, and to sustain a conviction if such inference is not explained or refuted by other evidence.

". . . the defendant's exception cannot be sustained, and therefore the decision of the superior court finding the defendant guilty stands."

In another New York case, wherein the defendant appealed the finding of guilty and the imposition of a $5.00 fine for illegal parking, the court said:

"If this judgment is to be sustained, it is necessary for us to hold that the proved fact of the ownership of the automobile by the appellant raises the presumption that the car was under the control of the appellant, and that therefore he is responsible for having violated the provisions of the ordinance against illegal parking. Without this presumption no prima facie case has been made out." People v. Marchetti, 154 Misc. 147, 276 N.Y.S. 708 (1934).

The court held the presumption rule applies. After discussion of various applications of the presumption rule in related areas, the court held,

"Granting that mere ownership of an automobile is not evidence of exclusive control, still it is well within the owners power to produce evidence as to who was or was not in control, evidence which the people are in most cases unable to present.

"I hold, therefore, in this case, given evidence of ownership and illegal parking, the prosecution may rest their case upon a presumption of guilt, making it incumbent upon the defendant to produce evidence that would negative this presumption. Presumptions need not always be provided for by statute, as conclusively appears from the cases above cited and numerous others." Id. at p. 711.

The court, in People v. Johnson, 228 N.Y.S.2d 527 (1962), commented on the presumption rule and said:

"Where a motor vehicle is registered in the name of a particular owner, a presumption is created that the owner is the person who violated the parking ordinance, and the burden is placed upon the owner to offer proof that he was not in possession or control of the vehicle. This principle does not change the law as to the presumption of innocence, but merely shifts the burden of going forward from the people to the defendant."

The only case which this writer found wherein the court refused to apply the presumption rule in a parking violation matter is State v. Scoggin, 236 N.C. 19, 72 S.E.2d 54 (1952). While the court recognized the desirability of such a rule, it declined to give rise to such a presumption in the absence of a statute or ordinance authorizing its use. The court refused to apply the presumption because the previous session of the state legislature had rejected a bill on such a presumption.

CONCLUSION

Because of the peculiar nature of parking violations, parking tickets would be useless unless the City also has a practical means of enforcement and this is a presumption rule of evidence inferring that the owner was the one committing the violation. Since the owner is the one with the best knowledge, he can easily refute the inference if he was not the violator. In order to balance the rights of the people as a whole against the individual rights, it is not unreasonable to allow the court to use common sense of mankind to give weight to such an inference. The rule does not relieve the prosecution of the burden of proof, but merely shifts the burden of proof to the defendant. There is a common law presumption rule in effect, that is, as Justice Crockett stated in his dissenting opinion in the

case of Nasfell v. Ogden City, 122 Ut. 344, 249 P.2d 507 (1952), p. 513, "to infer that the owner parked his automobile or was responsible for doing so."

It is urgent that this Court rule that there is a presumption rule of evidence as herein stated and remand this case to the District Court with such instructions.

Respectfully submitted,

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